

**U.S. Department of Justice**  
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

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File: A91 769 063 - San Antonio

Date:

In re: JUAN NERI-LIZCANO

APR 5 1996

IN DEPORTATION PROCEEDINGS

**INDEX**

APPEAL

ON BEHALF OF RESPONDENT: Antonio Reyes-Vidal, Esquire  
1047 1/2 Culebra  
San Antonio, Texas 78201

ON BEHALF OF SERVICE: Nancy A. Kryzanowski  
Assistant District Counsel

CHARGE:

Order: Sec. 241(a)(1)(E)(i), I&N Act [8 U.S.C.  
§ 1251(a)(1)(E)(i)] - Smuggling aliens

APPLICATION: Waiver of deportability under section  
241(a)(1)(E)(iii) of the Act; voluntary departure

In a decision dated March 23, 1993, the Immigration Judge found the respondent deportable under section 241(a)(1)(E)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1251(a)(1)(E)(i). The Immigration Judge denied the respondent's applications for a waiver pursuant to section 241(a)(1)(E)(iii) of the Act and for voluntary departure. The respondent has appealed from the Immigration Judge's denial of relief from deportation. The appeal will be sustained.

The respondent is a native and citizen of Mexico. He adjusted his status to that of lawful permanent resident on November 1, 1989. At his deportation hearing on March 23, 1993, the respondent conceded that on August 11, 1991, he assisted three aliens to enter the United States in violation of section 241(a)(1)(E)(i) of the Act, as alleged in the Order to Show Cause (Exh. 1; Tr. at 1). He sought a section 241(a)(1)(E)(iii) waiver, claiming that the three aliens are his stepdaughters.

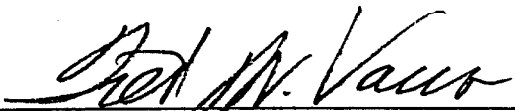
The three aliens are his wife's daughters from a previous marriage. The respondent and his wife were married on May 20, 1992 (Exh. 7). Thus the step parent relationship did not exist when the respondent assisted the three girls to enter the United States illegally on August 11, 1991. The Immigration Judge found

that the respondent was statutorily ineligible for the waiver under section 241(a)(1)(E)(iii) because the girls did not qualify as his daughters at the time the smuggling occurred. 1/

Section 241(a)(1)(E)(iii) of the Act provides a discretionary waiver of deportability for lawful permanent resident aliens who engaged in smuggling a spouse, parent, son, or daughter, into the United States. In a recent precedent decision, the Board held that this waiver is available for a lawful permanent resident alien who attempted to smuggle one of the specified family members even if the familial relationship arose after the smuggling incident, but exists at the time of the waiver application. Matter of Farias, Interim Decision 3269 (BIA 1996). Under Farias the respondent meets the statutory eligibility requirements to apply for the waiver he seeks. Accordingly, his appeal of the Immigration Judge's pretermission of his 241(a)(1)(E)(iii) waiver application will be sustained. 2/

ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion.

  
FOR THE BOARD

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- 1/ The respondent and his wife married when the three girls were all under the age of 18. They are now ages 19, 18 and 11. The girls, as the respondent's stepchildren, fit the statutory definition of children pursuant to section 101(b)(1)(B) of the Act, 8 U.S.C. § 1101(b)(1)(B).
- 2/ The Immigration Judge's denial of the respondent's application for voluntary departure is correct and is affirmed. Pursuant to section 101(f)(3) of the Act, the respondent cannot establish good moral character, which is required for voluntary departure. In pertinent part, section 101(f)(3) provides that an alien who is a member of the class of persons described under section 212(a)(6)(E) of the Act, which refers to alien smuggling, is not a person of good moral character.